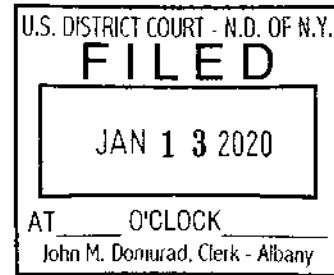


UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK



STEVEN ERBY

CASE NO. 1:19-CV-1562-TJM-ABT

Defendant,

JUDGE THOMAS J. MCAVORY

EMERGENCY ORDER OF PROTECTION

KEYBANK NATIONAL ASSOCIATION

Plaintiff,

Defendant, Steven A. Erby - Answer to the complaint Document 22 Filed 01-07-2020

I have duly sworn myself to state nothing but factual data to the court. I am over 18 yrs of age, and if called before the Court to testify, I could and would testify competently to the facts set forth herein.

PRELIMINARY STATEMENT

The Defendant and KeyBank started working together in late 2008. The Defendant signed a direct sale with KeyBank for two small systems located on KeyBank Properties. The projects took about a year and a half to get necessary approvals to complete. The defendants designed and installed car ports in the KeyBank parking area located in Colonie and Schodack, New York. The Defendants were chosen from a group of five companies and Key liked ours the best. This was a major deal for us as we were literally two guys in the garage. I am still very proud of this two locations as they are the Cadillac's if you will, I always taught my men that you are only as good as your last job, and if you have to ask if it's good enough, then you already know the answer.

A few years past and the defendants continued to hold accounts at KeyBank. In the meantime, the defendant signed contracts to deliver 17 million watts of power to First Niagara Bank. This was zero costs to them, and they would buy the power from the defendant's solar systems under what is called a Power Purchase Agreement (PPA). Just after signing the contracts First Niagara was acquired by KeyBank. The pause button was pressed for about 9-12 months, as KeyBank reviewed the terms of the PPA and considered what branches would stay

open as the systems were to go on the Plaintiffs Roofs. (Commonly Called Behind the Meter) or (BTM).

In Late 2013 or early 2014 the rules (laws) changed and the Defendants could bring power from anywhere and no longer had to be on the Plaintiffs roofs. In the industry this was a transition from on site to RNM (Remote Net Metered). Thus, pretty much overnight changed the entire industry. Most of the Defendants time was spent fighting the utilities to agree on the location of the systems. This included both roof and farm systems. We are unique in the industry despite the Plaintiff's claims. Most solar companies build the systems and sell them to others, who could consume the tax incentives to offset the up-front costs. Up until 2015 Monolith had never taken a single loan to build any of the existing systems. The defendants were asset rich and cash poor, mainly because the utilities would take so long to interconnect. From 2009 – 2012, the Defendants had about 20 employees and were still in the garage. As your Honor can see from the customer list, we were filling a need and doing it well. There are approximately 435 system from Tarry-Town to Kansas City. Our biggest weakness has always been ACCOUNTING. I would drive the team crazy checking and double checking the accounts to insure we were billing everyone correctly. We sold solar; however, this was rare and often small residentials (BTM). The Majority of our business is (PPA) (Power Purchase agreements) promoting and selling energy to everyone from NYSUT to the local Mon and Pop retail shop.

A PUBLIC UTILITY as defined by USLEGAL.COM

"A public utility is a business or service, which may be publicly or privately owned, engaged in supplying the public generally with some commodity or service, such as electricity, gas, water, transportation, or telephone or telegraph service. Privately owned public utilities most often operate within a designated area through an exclusive franchise granted by the legislature, public service commission, or other regulatory agency, and their operation is strictly regulated by the franchisor. Public utilities may be required to file rate schedules with a public service commission. Usually, there must be an approval by the regulatory body before such rates or proposed changes in rates may take effect."

The Defendant is attaching a list of the 166 customers that need to sign an Estopples and consents in order to transfer title to Sun Light Energy. These are the oldest systems we have and are typically small as that was the incentive at the time of construction. Labeled **Exhibit 1B**. This Tranche in total will net \$2.5M to Key Bank. This contract has been approved by Key, however it has been slow going on getting the releases that the customer (SLG) requires.

Monolith Had finally returned to work after a very exhausting year. One system was built Nelliston NY. See **attachment 2B**, which had about a 30% margin. Roughly, \$250,000. Also here is the Troy Landfill project which has a \$1.3M – 1.5M Profit margin. One sheet prepared by

Chris Stroud former CEO the other was emailed by Dan Scouler on May 2nd, 2019. Key Bank might say this project is overbudget, however they are looking at bad data. Co-Construct was being managed by a temp employee who wrote the letter to the court. Mac, and for some reason he was not updating the data.

The Defendant has been living in the construction trailer since the day we got approval from KEY BANK. My mission was to impress NextEra so that we could build \$50M and not just the \$15M that was already signed. With all the downsizing since last year we only had one person working on Estopple's. My plan was to help her from the job site, however the day we started we got 36 inches of snow. The Defendant rarely left the bulldozer, as we had to have the site ready. NextEra signed with Monolith in late January or early February 2019. We finally got the go ahead in October 2019. The Plaintiff is claiming we are full of Puffery and getting the signatures is harder then one might think. The Defendant is asking the court to consider the fact that this is what we have been doing for the last decade.

On February 19th Of 2019, the defendant called Leslie to inform her that a recruiter had come in to the office and after he learned what the employee had done. (No one had said the employee name, "he said was that "X""). All our jaws dropped he then informed us that he had done this ten years ago to another local firm. He said they paid him to go away and he lost them as a client. And, he was willing to go to Key and sign a statement.

On this same phone call, Leslie described our industry as a pyramid where once new people stop coming in the bubble burst. This led me to believe she doesn't believe in what we do, and perhaps more importantly the Defendants and their abilities to cure the Defaults.

ANSWER TO DOCUMENT 22

#1) Slight Error- Former First Niagara buys the power from Monolith. Key Bank finances anyone except their own consumption. They were concerned that this was a conflict of interest in regard to ITC (Investment Tax Credit) Consumption. Defendant Denies that the systems are in harm's way. The Defendant has not taken more then two days off since this attack occurred. The Defendant will volunteer cell records to show that he has been out every weekend and nights, mowing and repairing inverters that may be down. **(Attachment 3B)** We got a bunch of bad Inverters from Solar Edge must times we can reset from office however occasionally a truck has to roll to hard reset. The Defendants sell power not Panels, so it is their best interest to have maximum production. Key Bank is contracted to purchase approximately \$600,000 in power each year for the next 15-20 years. Defendant would like to let your Honor know that often people or Entities pay late as they don't understand how it works. This problem will be eliminated soon as Consolidated Billing is before The Public Service Commission and all rate payers will pay the utility and we will have 5 Utilities to Bill monthly.

#2-3) Defendants Con-Cur. However, everyone had accepted the repayment terms set forth in the Restructuring Plan. Defendant Claims that Key had ANCHORED the Monolith brand by placing us in

default prior to an AUDIT. It also initiated a BREACH OF TRUST as the company was forced to lay off over a hundred Men and Woman as a result of a failure to CURE, after it was found that there was no illegal activity found. As far as interfering with the CRO, the only response the Defendant has is that no one wanted Leslie to do this. See emails she threatens this every other day. The Defendant was being extra nice as they knew the END was near to pay Leslie. The Defendant holds that Leslie Undue Influence with GMES by forcing the company to sign a security agreement that is unconscionable. See attachment Email From Dan Scouler. Only Disagreement that was had, as the Law Firm was not familiar with NYS Law and could not answer our questions. Defendant bit his tongue and just agreed that we would have to pay him before such a risk arose.

#4-58) Con-Cur

#59) Monolith has a niche in that until recently we held every asset as the goal was to create a new UTILITY. Most companies don't have \$3.9M a year recurring revenue.

#60-142) Only mention here is that the Forbearance more and more restrictive and guaranteed DEFAULT. Most times they were so late that in essence most of the time there was no standing FORBEARANCE.

#143) The Defendants best skill was gathering money for the CRO's from AP that was in the rears. Most times they would only give me a day or two to gather \$50-100k. Defendant states that the 13 week was being done by low level employees as the CRO was absent with another Client. Defendant states that today- the books are being done by an unqualified person with zero education in bookkeeping.

#149) This was being Handled by the CRO as GMES had had hit us with a SLAPP Claus and had openly communicated to everyone including Defendants Employees that the Defendants were incompetent and not capable of COMMISSIONING the Systems. The Defendants had commissioned over a 1000 systems. The 3.6 took almost a year. The Defendant had stayed in Buffalo with the 20 men in one large Air B&B and helped build the systems prior to the attack. Please see Exhibit 4B long term cash flow provided by GMES.

#150) Chris Stroud was doing 90% of the duties Leslie Assigned to the CRO, see emails all were just frustrated with the lack of participation. They knew they had no fear as they had UNDUE rights to be there. Thus besides the two GMES transactions, Defendant tiptoed as much as he could.

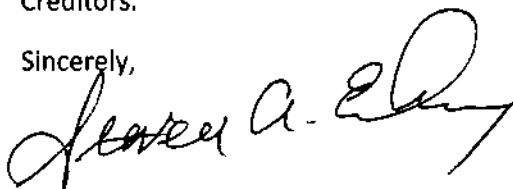
#158) Deny

#159-168) Please see Emails Besides incurring more debt with GMES, everything was Harmonic.

In Closing we have a path to pay off the Lien that Key did not Fund, We have all been requesting lien releases.

One last mention, Morris Anderson assured us that GMES could never jump ahead of other Creditors.

Sincerely,



Steven A. Erby